



FAIRFAX
COUNTY

STAFF REPORT

V I R G I N I A

PROPOSED ZONING ORDINANCE AMENDMENT

Public Use Definition

PUBLIC HEARING DATES

Planning Commission

October 27, 2005 at 8:15 p.m.

Board of Supervisors

November 21, 2005 at 5:00 p.m.

**PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314**

September 26, 2005



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STAFF COMMENT

The proposed Zoning Ordinance amendment is prompted by a recent request from the Board of Supervisors to clarify the definition of “public use” to ensure that the term includes those County facilities that are held, used, owned or controlled primarily for public purposes by the federal government, the Commonwealth of Virginia, the Board of Supervisors, the Fairfax County School Board, and the Fairfax County Park Authority, such as athletic fields, sports courts and golf courses, which are used by members of the public such as youth groups or educational institutions for recreational activities.

Existing Zoning Ordinance Provisions

The Zoning Ordinance currently defines a public use, in pertinent part, as “[A]ny area, building or structure held, used or controlled exclusively for public purposes by any department or branch of the Federal Government, Commonwealth of Virginia, or the Fairfax County government under the direct authority of the Board of Supervisors, the Fairfax County School Board or Fairfax County Park Authority, without reference to the ownership of the building or structures or the realty upon which it is situated”. Public uses are permitted by right in all zoning districts.

Background

One of the issues before the Supreme Court of Virginia in two recent cases, *West Lewinsville Heights Citizens Association v. Board of Supervisors*, Record No. 042274, and *Board of Zoning Appeals v. Board of Supervisors*, Record No. 042326, was whether the use of an athletic field at Lewinsville Park by Marymount University (Marymount) for college athletic events changed Lewinsville Park from a public use, which is permitted by right, to a different use that required special permit or special exception approval.

Lewinsville Park is zoned R-3 District and owned and operated by the Fairfax County Park Authority. For many years, McLean Youth Soccer (MYS) has been allocated time at Lewinsville Park. On January 17, 2003, the Park Authority and MYS entered into an agreement whereby MYS agreed to install synthetic turf and other related improvements on Field #2 at Lewinsville Park. To enable MYS to finance the installation of the improvements required by the agreement, MYS and the Park Authority agreed that the Park Authority would allow Marymount to use up to 300 hours of the time allocated to MYS for the use of Field #2 for soccer and lacrosse practice sessions and games, and Marymount agreed to contribute approximately 50% of the cost of the synthetic turf and other related improvements to MYS. Lewinsville Park, including Field #2, has remained at all times under the ownership and the direct control of the Park Authority and is open for use by others when not reserved in advance.

On April 28, 2003, the Zoning Administrator determined, among other things, that Lewinsville Park is a public park operated by the Park Authority and therefore constitutes a public use, which is a by-right use in all zoning districts. Since the use of Lewinsville Park by Marymount did not change the nature of that use, the Zoning Administrator determined that no

special exception or special permit was required for Marymount's use of Lewinsville Park.

The Zoning Administrator's April 28, 2003 determination was appealed to the Board of Zoning Appeals (BZA). At its September 16, 2003, meeting, the BZA overturned the Zoning Administrator's determination and concluded, in effect, that Lewinsville Park is not a public use even though it is owned and operated by the Park Authority and is used for public purposes. The Board of Supervisors, the Park Authority and the Zoning Administrator then filed a Petition for Writ of Certiorari ("County's Petition") to appeal the BZA's decision to the Fairfax County Circuit Court.

On June 23, 2004, the Circuit Court of Fairfax County ruled that the BZA's decision was plainly wrong, that it was based on erroneous principles of law, and that Lewinsville Park continues to be a public use under the Zoning Ordinance despite its use by Marymount pursuant to the agreement. Therefore, the Court ruled that no special exception was required for Marymount's use of Lewinsville Park and reversed the BZA's decision.

The BZA and individual property owners appealed to the Supreme Court of Virginia to challenge the decision of the Circuit Court. On September 16, 2005, the Supreme Court of Virginia issued its decision, which held that the BZA had erroneously informed the County that its decision was final on September 24, 2004, and, as a result, the County's Petition was not filed within 30 days after the BZA's September 16, 2003, final decision. Therefore, the Court reversed the Circuit Court's decision on that ground, vacated the Circuit Court's judgment, and dismissed the County's appeal. The Court did not rule on the merits of the case regarding the "public use" issues.

The Lewinsville Park litigation and the underlying BZA decision at issue in that case involved an interpretation of the Zoning Ordinance definition of the term "public use" and the portion of the definition that states that the use must be "exclusively" used for public purposes. In response to the litigation, the Board requested staff to prepare an amendment to the Zoning Ordinance definition of public use to clarify that the term "public use" includes the use of County facilities, such as Lewinsville Park, by members of the public such as youth groups, educational institutions, such as Marymount, and other groups for public purposes.

As evidenced by longstanding administrative practice, staff has always considered private individuals, organizations, or institutions to be members of the public and that, when public uses such as parks and athletic fields are used by those groups, they continue to be public uses. To interpret the Zoning Ordinance definition of a public use otherwise would preclude the ability of an individual to reserve an historic building for a wedding or a picnic shelter at a park for a family reunion gathering, prevent the numerous youth sports organizations from reserving field and court space at parks, and prohibit other arguably "private" uses such as farmers' markets without special permit or special exception approval, assuming that the Zoning Ordinance even provided for such approvals. Public parks and athletic facilities could not be used for the very purpose for which they were created, namely, to provide a place where the public may reserve time for recreational and other organized activities. Staff believes that such an interpretation was never intended and that the definition of "public use" should be clear that

such uses do not change the public use nature of the facility.

Proposed Amendment

In light of the BZA's recent application of the definition of public use, this amendment removes the requirement that the use be "exclusively" for public purposes and makes it clear, with respect to parks and/or athletic facilities held, used, owned, or controlled by the Fairfax County Park Authority or the Fairfax County School Board, that such property, when used by an organized group such as a youth group or educational institution, is not transformed from a public use to a use requiring a special exception or other zoning approval, provided that such use is permitted by the Park Authority or School Board.

Conclusion

The proposed amendment clarifies the "public use" definition and would continue to allow the use of County facilities by organized groups, such as sports groups or educational institutions. Without such an amendment, it could be contended that weddings could not take place in public facilities, that sports teams could not practice and play games on County fields, and many other arguably "private" uses such as farmers' markets could not occur on County park land or on school facilities without special exception or other zoning approval being required for each and every use. Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of September 26, 2005 and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by revising the Public Use definition to read as follows:

PUBLIC USE: Any area, building or structure held, used, owned or controlled ~~exclusively~~ primarily for public purposes by any department or branch of the Federal Government, the Commonwealth of Virginia, ~~or~~ the Fairfax County government under the direct authority of the Board of Supervisors, or by the Fairfax County School Board or Fairfax County Park Authority, without reference to the ownership of the building or structures or the realty upon which it is situated. With respect to the use of parks and/or facilities such as athletic fields, sports courts and golf courses held, used owned or controlled by the Fairfax County Park Authority or the Fairfax County School Board, any such use by an organized group such as a youth club or educational institution shall be deemed a public use as long as such use is permitted by the Park Authority or School Board, whichever is applicable.

For the purpose of this Ordinance, uses sponsored by the agencies such as the Fairfax County Water Authority, Social Services Board, Redevelopment and Housing Authority, Economic Development Authority, Juvenile Court and Fairfax-Falls Church Community Services Board shall not be deemed public uses and shall be subject to the applicable Zoning Ordinance provisions for the proposed use; provided, however, if such uses are implemented under the direct authority of the Fairfax County Board of Supervisors, they shall be deemed public uses.